

Notice of Allowability	Application No.	Applicant(s)	
	09/738,599	NOLAN ET AL.	
	Examiner	Art Unit	
	S. Devi, Ph.D.	1645	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☐ This communication is responsive to _____.
2. ☒ The allowed claim(s) ~~is/are~~ claims 30-33, 69 and 70, now renumbered as claims 1-3, 4 and 5 respectively.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|--|---|
| 1. <input type="checkbox"/> Notice of References Cited (PTO-892) | 5. <input type="checkbox"/> Notice of Informal Patent Application |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 6. <input type="checkbox"/> Interview Summary (PTO-413),
Paper No./Mail Date _____ |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO/SB/08),
Paper No./Mail Date _____ | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit
of Biological Material | 8. <input type="checkbox"/> Examiner's Statement of Reasons for Allowance |
| | 9. <input checked="" type="checkbox"/> Other <u>PTOL-461</u> . |

ATTACHMENT TO NOTICE OF ALLOWABILITY

Appeal Dismissal

1) Because an appeal brief was not timely filed in the instant application and the period for obtaining an extension of time to file the brief under 37 CFR 1.136(a) has expired, the appeal in this application is dismissed. Because of the dismissal of the appeal, this application is before the Examiner for final disposition because it contains some allowed claims. See the attached PTOL-461.

MPEP 1215.04 [R-3] states that if claims stand allowed in an application, the failure to file a brief and consequent dismissal of the appeal is to be treated as a withdrawal of the appeal and of any claim not standing allowed. The application should be passed to issue forthwith.

Status of Claims

2) Claims 37-42, 44, 45, 67 and 68 have been canceled via the instant Office action.
Claims 30-33, 69 and 70 are pending and are under examination.

Rejection(s) Moot

3) The rejection of claims 37-40 and 67 made in paragraph 14 of the Office Action mailed 06/08/06 and maintained in paragraph 10 of the Advisory Action mailed 07/25/06 under 35 U.S.C § 102(b) as being anticipated by Barondess *et al.* (*Nature* 344: 871-874, 1990, already of record) (Barondess, 1990) as evidenced by Harlow *et al.* (*In: Antibodies: A Laboratory Manual*. Cold Spring Harbor Laboratory, Chapter 5, p. 76, 1988, already of record) and Hunter (US 5,554,372), is moot in light of the cancellation of the claims via this Office Action.

4) The rejection of claim 41 made in paragraph 15 of the Office Action mailed 06/08/06 and maintained in paragraph 11 of the Advisory Action mailed 07/25/06 under 35 U.S.C § 103(a) as being unpatentable over Barondess *et al.* (*Nature* 344: 871-874, 1990, already of record) (Barondess *et al.*, 1990) as applied to claim 37 above and further in view of Applicants' admitted state of the prior art, is moot in light of the cancellation of the claim via this Office Action.

5) The rejection of claims 42 and 68 made in paragraph 16 of the Office Action mailed 06/08/06 and maintained in paragraph 12 of the Advisory Action mailed 07/25/06 under 35 U.S.C § 103(a) as being unpatentable over Barondess *et al.* (*Nature* 344: 871-874, 1990, already of record) (Barondess *et al.*, 1990) as applied to claim 38 above and further in view of Krieg *et al.*

(WO 96/02555, already of record), is moot in light of the cancellation of the claims via this Office Action.

Remarks

- 6) Claims 30-33, 69 and 70, now renumbered as claims 1-4, 5 and 6 respectively are allowed.
- 7) Papers related to this application may be submitted to Group 1600, AU 1645 by facsimile transmission. Papers should be transmitted via the PTO Central Fax number (571) 273-8300, which receives transmissions 24 hours a day and 7 days a week.
- 8) Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAG or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.Mov>. Should you have questions on access to the Private PAA system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).
- 9) Any inquiry concerning this communication or earlier communications from the Examiner should be directed to S. Devi, Ph.D., whose telephone number is (571) 272-0854. A message may be left on the Examiner's voice mail system. The Examiner can normally be reached on Monday to Friday from 7.15 a.m. to 4.15 p.m. except one day each bi-week, which would be disclosed on the Examiner's voice mail system.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Jeffrey Siew, can be reached on (571) 272-0787.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (571) 272-1600.



S. DEVI, PH.D.
PRIMARY EXAMINER

February, 2007

Communication Re: Appeal

Application No.

09/738,599

Examiner

S. Devi, Ph.D.

Applicant(s)

NOLAN ET AL.

Art Unit

1645

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

1. ☐ The Notice of Appeal filed on _____ is not acceptable because:
- (a) ☐ it was not timely filed.
 - (b) ☐ the statutory fee for filing the appeal was not submitted. See 37 CFR 41.20(b)(1).
 - (c) ☐ the appeal fee received on _____ was not timely filed.
 - (d) ☐ the submitted fee of \$_____ is insufficient. The appeal fee required by 37 CFR 41.20(b)(1) is \$_____.
 - (e) ☐ the appeal is not in compliance with 37 CFR 41.31(a)(1) in that no claim has been twice rejected.
 - (f) ☐ a Notice of Allowability, PTO-37, was mailed by the Office on _____.
2. ☐ The appeal brief filed on _____ is NOT acceptable for the reason(s) indicated below:
- (a) ☐ the brief and/or brief fee is untimely. See 37 CFR 41.37(a).
 - (b) ☐ the statutory fee for filing the brief has not been submitted. See 37 CFR 41.20(b)(2).
 - (c) ☐ the submitted brief fee of \$_____ is insufficient. The brief fee required by 37 CFR 41.20(b)(2) is \$_____.

The appeal in this application will be dismissed unless corrective action is taken to timely submit the brief and requisite fee. See 37 CFR 41.37(a)(1). Extensions of time may be obtained under 37 CFR 1.136(a). See 37 CFR 41.37(e).

3. ☒ The appeal in this application is DISMISSED because:
- (a) ☐ the statutory fee for filing the brief as required under 37 CFR 41.20(b)(2) was not timely submitted and the period for obtaining an extension of time to file the brief under 37 CFR 1.136(a) has expired.
 - (b) ☒ the brief was not timely filed and the period for obtaining an extension of time to file the brief under 37 CFR 1.136(a) has expired.
 - (c) ☐ a Request for Continued Examination (RCE) under 37 CFR 1.114 was filed on _____.
 - (d) ☐ other: _____.
4. ☒ Because of the dismissal of the Appeal, this application:
- (a) ☐ is abandoned because there are no allowed claims.
 - (b) ☒ is before the examiner for final disposition because it contains allowed claims. Prosecution on the merits remains CLOSED.
 - (c) ☐ is before the examiner for consideration.

SD Feb-07
S. DEVI, PH.D.
PRIMARY EXAMINER